

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Zurab Kakushadze,	)	
A46-132-266	)	
Plaintiff,	)	
	)	07 Civ. 8338 (DCF)
	)	
-against-	)	ECF Case
	)	
MICHAEL CHERTOFF, SECRETARY OF THE	)	
DEPARTMENT OF HOMELAND SECURITY	)	
	)	
and	)	
ROBERT MUELLER, DIRECTOR,	)	
FEDERAL BUREAU OF INVESTIGATION	)	
Defendants.	)	

**MEMORANDUM OF LAW  
IN OPPOSITION TO  
DEFENDANT'S MOTION TO DISMISS**

JAN H. BROWN  
Law Office of Jan H. Brown, PC  
1150 Ave. of the Americas, Ste. 700  
New York, NY 10036

Attorneys for the Plaintiff

## TABLE OF CONTENTS

	PAGE
Preliminary Statement	1
History of the Case	1
Argument	2
I.    The Defendants have not proposed any substantial jurisdictional issues in their Motion to Dismiss, which should therefore be denied.	2
II.   There is no law or mandate, congressional or otherwise, that calls for the completion of a “name check” before a naturalization application can be completed.	5
III.  USCIS has a duty to adjudicate this case, and allowing it to remain un-adjudicated indefinitely is to fail in that duty.	8
IV.   The APA imposes an independent duty on the Defendants to perform their nondiscretionary tasks in a timely fashion, with or without an explicit time frame specified within a specific law.	10
V.    Mandamus is appropriate in the instant case; should the courts cease to grant mandamus in this and similar cases, USCIS and/or the FBI can keep a file open indefinitely, thus failing to perform their nondiscretionary duty without check.	14
VI.   The courts have held that USCIS and the FBI have a non-discretionary duty to process an N-400 case in a timely manner.	15
VII.  Mandamus has been granted in similar cases, establishing a precedent wherein the district court compels USCIS and the FBI to complete work within a reasonable amount of time – usually days.	17
VIII. The FBI has failed to perform its non-discretionary duty to process this background check in a timely fashion.	18
IX.   The Defendants’ argument that name check cases are handled on a “first-in, first-served” basis is false.	21
X.    The Plaintiff wants his application processed in a timely manner for significant humanitarian reasons.	22
Conclusion	24